

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UMER MASOOD,

Case No. 07-CV-4526 (PJS/RLE)

v.

Petitioner,

ORDER ADOPTING REPORT AND
RECOMMENDATION

COUNTY OF WINONA,

Respondent.

Umer Masood, petitioner pro se.

Peter R. Marker, MINNESOTA ATTORNEY GENERAL'S OFFICE, for respondent.

This matter is before the Court on petitioner Umer Masood's objection to Magistrate Judge Raymond L. Erickson's November 20, 2007 Report and Recommendation ("R&R"). Judge Erickson recommends that Masood's petition for habeas corpus under 28 U.S.C. § 2254 be summarily dismissed under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Court has conducted a de novo review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court adopts the R&R and dismisses Masood's petition with prejudice.

The Court has also considered whether it is appropriate to issue a certificate of appealability ("COA"). *See Tiedeman v. Benson*, 122 F.3d 518 (8th Cir. 1997). For a COA to issue, Masood must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To satisfy this standard, Masood must show that the issues that he wishes to raise on appeal are "debatable among reasonable jurists," that different courts "could resolve the

issues differently,” or that the issues otherwise “deserve further proceedings.” *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994). Masood has not made such a showing with respect to the jurisdictional and procedural barriers to his habeas petition, and he is therefore not entitled to a COA. *See Khaimov v. Crist*, 297 F.3d 783, 785 (8th Cir. 2002) (to obtain a COA, a petitioner must show both that it is debatable whether the petition states a valid claim of the denial of a constitutional right *and* that it is debatable whether the district court was correct in its procedural ruling).

ORDER

Based on all of the files, records, and proceedings herein, the Court ADOPTS the R&R [Docket No. 3]. IT IS HEREBY ORDERED THAT:

1. Petitioner’s 28 U.S.C. § 2254 petition for writ of habeas corpus [Docket No. 1] is DISMISSED WITH PREJUDICE AND ON THE MERITS.
2. No certificate of appealability will issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 22, 2008

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge